

UNITED STATES COURT OF APPEAL SECOND CIRCUIT

AND UNITED STATES EASTERN DISTRICT COURT

C/M

UNDER

POOR PERSON

MIGUEL.CRUZ

PLAINTIFF DIN# 11A3104

V,

PEOPLE /court/defendants

CRUZ V REINER et.al., REPONDENTS

STATE: NEW YORK

COUNTY: ORLEANS

SEE ENDORSED ORDER LAST PAGE

NOTICE OF APPEAL AGAINST
COURTS DENIAL IN
MOTION FOR ORDER TO
PRODUCE ALL AUDIO
RECORDED CONFERENCE
CALLS PURSUANT UNDER
BRADY MATERIAL ,RULE 16,
40 A.L.R.5th 113,RULE 34
(a)(1)(A)RULE 26(a)(1)(A)
(i)(ii),RULE 26(f) *Also see Rule 72*
ORDER TO COMPELL
DOCKET#12-4221pr

I, PLAINTIFF SUBMIT THIS MOTION FOR THE COURT OF APPEALS OF THE SECOND CIRCUIT TO ORDER THE EASTERN DISTRICT COURT TO PRODUCE FREE OF CHARGE ALL RECORDED/TELEPHONE CONFERENCE CALLS FROM THE VERY FIRST CONFERENCE CALL WITH MAGISTRATE CHIEF JUDGE HON. STEVEN M.GOLD, ALL DEFENSE ATTORNEY'S /MR.J.MARUTOLLO. FOR IMPEACHMENT AS WELL AS TO SUBPEONA ATTORNEY MR JEFFREY.CHARBOWE, IN WHICH MR J. CHARBOWE IS PLAINTIFFS FORMER ATTORNEY DURING PLAINTIFFS SENTENCING AND IS WILL DEMONSTRATE TO THE COURT OF THE DEFENDANTS ADMITTANCE TO PLAINTIFFS UNCONSTITUTIONAL ILLEGAL CONFINEMENT, AS PLAINTIFF DEMANDS THAT PLAINTIFF BE ALLOWED TO DEPOSE MR.J.CHARBOWE. MR.J. CHARBOWE , WILL SHOW THAT DEFENDANTS KNEW OF THE ILLEGAL CONFINEMENT OF PLAINTIFF , IN WHICH MR.J.CHARBOWE ASKED A.D.A JONATHAN.REINER(ONE OF THE DEFENDANTS) OF THE PLAINTIFFS UNCONSTITUTIONAL ILLEGAL CONFINEMENT AND WHAT WAS ILLEGALLY DONE IN THAT WINDOWLESS ROOM FROM FEBRUARY 22,2010 thru FEBRUARY 25, 2010, IN WHICH MR.J.CHARBOWE STATED ON A THREE WAY CALL WITH PLAINTIFF AND PLAINTIFF WIFE WHILE PLAINTIFF WAS AT RIKERS ISLAND STATED"DO YOU REALLY WANT TO KNOW WHAT REINER SAID WHEN I ASK HIM IF HE KNEW OF THE CONDITIONS THAT MR.CRUZ WAS IN ,IN THAT ROOM.,AND I DON'T KNOW WHAT IT IS WITH REINER BUT EVERYTIME I ASK HIM ABOUT THOSE CONDITIONS HE GETS NERVOUS AND SHAKY ,AND WHEN I ASKED HIM THIS TIME YOU KNOW WHAT HE DID HE AGAIN WAS NERVOUS AND BEFORE ANSWERING ME HE LOOKED AROUD THE COURT HOUSE TO AMKE SURE THEIR WAS NOBODY CLOSE ENOUGH TO HEAR, AND STARTED TO LAUGH AND SAID YES , I KNOW AND TURNED RED. MR. J.CHARBOWE TOLD ME TO PLACE THIS LAW SUIT ,(AS WELL AS MR.SMITH BECAUSE HE TO ASKED A.D.A. REINER AND REINER TOLD HIM THE SAME THING). WITH MYSELF AND MY WIFE MRS.DAMARY.CRUZ ON THE PHONE. AND PLAINTIFF SHOULD BE ALLOWED TO DEPOSE BOTH MR.J CHARBOWE AND MR.EON,SMITH, AS WELL AS PLAINTIFFS WIFE MRS.DAMARY.CRUZ WHICH WILL PROVE DEFENDANT REINER ADMITTANCE TO MY UNCONSTITUTIONAL ILLEGAL CONFINEMENT CLAIMS EVEN BEFORE I ACTUALLY PLACED THE CLAIM. WHICH IT IS PURSUANT TO BRADY FOR IMPEACHMENT OF WITNESSES.

PLAINTIFF, NOW DEMANDS THAT YOUR HONORABLE E.D.C. MAGISTRATE BE ALSO ORDERED TO PRODUCE ALL VIA TELEPHONE CONFERENCE CALLS FREE OF CHARGE AS PLAINTIFF CANNOT AFFORD TO PAY FOR THE TAPES, WHICH WILL PROVE THAT DEFENDANTS FORMER ATTORNEY"MR.J MARUTOLLO HAD ADMITTED WITH HIS CLIENTS PERMISSION THAT HIS CLIENTS ADMIT TO THE WRONG DOING WHILE PLAINTIFF WAS BEING HELD IN THE DISTRICT ATTORNEY'S BUILDING FOR THE FOUR TO FIVE DAYS AND ARE READY TO TALK SETTLEMENT WITH NO ADMITTANCE, AS MR.J.MARUTOLLO ALSO STATES TO MAGISTRATE JUDGE GOLD THAT THE JUDGE ALSO HAS TO CONSIDER THE FACT THAT MR.CRUZ'S CONVICTION IS ALSO FOR MORTGAGE FRAUD." SEE: (CRIMINAL LAW 1991(1)(DEFENDANT HAS CONSTITUTIONAL RIGHT TO BE APPRISED OF EVIDNCE FAVORABLE TO HIM OR HER, AND IT IS INCUMBENT UPON PROSECTUTOR TO ENSURE THAT THE EXCULPATORY EVIDENCE, INCLUDING THAT WHICH IS RELEVANT TO ISSUE OF CREDIBILITY, BE TURNED OVER TO DEFENDANT) IN WHICH THOSE CONFERENCE CALL RECORDINGS ARE AN ESSENTIAL ELEMENT TO THESE PROCEEDINGS AND SHOULD BE PRODUCED ALSO SEE(CRIMINAL LAW 700(2.1)(A PROSECUTOR MUST DISCLOSE INFORMATION FAVORABLE TO AN ACCUSED AND MATERIAL TO GUILT OR PUNISHMENT) ALSO SEE:(21AM.Jur CRIMINAL LAW SUBSECTION 1181)(FAILURE OF POLICE TO PRESERVE EXCULPATORY EVIDENCE AS VIOLATING CRIMINAL DEFENDANTS RIGHT'S UNDER STATE CONSTITUTION,40 A.L.R.5th 1130) ALSO SEE:

(CRIMINAL LAW 1999)(DISCLOSURE OF GIGLIO EVIDENCE , THAT IS, EVIDENCE REGARDING CREDIBILITY OF GOVERNMENT WITNESSES, IS GOVERNED BY SAME LEGAL PRINCIPLES WHICH ANIMATE DISCLOSURE OF BRADY EVIDNCE, THAT IS, EVIDENCE FAVORABLE TO ACCUSED, SINCEGIGLIO EVIDENCE IS SUB-SET OF THE UNIVERSE COMPRISING BRADY MATERIAL. U.S.C.A CONST.AMEND. 5th.) ALSO SEE:(CRIMINAL LAW 1999)(THERE IS NO ARTIFICIAL BRIGHT LINE BETWEEN THE TWO PRIMARY TYPES OF EVIDENCE WHICH THE GOVERNMENT IS REQUIRED TO DISCLOSED UNDER BRADY, i.e., IMPEACHMENT AND EXONERATORY EVIDENCE. U.S.C.A. CONST.AMEND. 5TH).ALSO SEE:(CITATION/TITLE RULE 16. DISCOVERY AND INSPECTION)(a)GOVERNMENTS DISCLOSURE (1) INFORMATION SUBJECT TO DISCLOSURE

(A) DEFENDANTS ORAL STATEMENTS.UON DEFENDANTS REQUEST, THE GOVERNMENT MUST DISCLOSE TO DEFENDANT THE SUBSTANCE OF ANY RELEVANT ORAL STATEMENT MADE BY THE DEFENDANTS, BEFORE OR AFTER ARREST, IN RESPONSE TO INTERROGATION BY PERSON THE DEFENDANT KNEW WAS A GOVERNMENT AGENT OF THE GOVERNMENT INTENEDS TO USE THE STATEMENT AT TRAIL.(B)DEFENDANTS WRITTEN OR RECORDED STATEMENT. UPON A DEFENDANT'S REQUEST, THE GOVERNMENT MUST DICLOSE TO THE DEFENDANT, AND MAKE AVAILABLE FOR INSPECTION,COPYING, OR PHOTOGRAPHING ALL OF THE FOLLOWING:(1)ANY RELEVANT WRITTEN OR RECORDED STATEMENTS BY THE DEFENDANTIF;-THE STATEMENT IS WITHIN THE GOVERNMENTS POSSESSION, CUSTODY,OR CONTROL;AND- THE ATTORNEY FOR THE GOVERNMENT KNOWS-)R THROUGH DUE DILIGENCE COULD KNOW --THAT THE STATEMENT EXIST;(ii)THE PORTION OF ANY WRITTEN RECORD CONTAINING THE SUBSTANCE OF ANY RELEVANT ORAL STATEMENT MADE BEFORE OR AFTER ARREST IF THE DEFENDANT MADE THE STATEMENT IN RESPONSE BY A PERSON THE DEFENDANT KNEW WAS A GOVERNMENT AGENT;(iii)THE DEFENDANTS RECORDED TESTIMONY BEFORE A GRAND JURY RELATING TO THE CHARGED OFFENSE). ALSO SEE:(RULE 34 DISCOVERY AND DISCLOSURE.)(PRODUCING DOCUMENTS,ELECTRONICALLY STORED INFROMTION, AND THE TANGIBLE THINGS, OR ENTERING ONTO LAND, FOR INSPECTION AND OTHER PURPOSES(a)IN GENERAL. A PARTY MAY SERVE ON ANY OTHER PARTY A REQUEST WITHIN THE SCOPE OF RULE 26(b):(1)TO PRODUCE AND PERMIT THE REQUESTING PARTY OR ITS REPRESENTATIVE TO INSPECT,COPY,TEST,OR SAMPLE POSSESSION,CUSTODY, OR CONTROL:(A) ANY DESIGNATED DOCUMENTS OR ELECTRONICALLY STORED INFORMATION- INCLUDING WRITINGS,DRAWINGS, GRAPHS, CHARTS, PHOTOGRAPHS, SOUND RECORDINGS, IMAGES, AND OTHER DATA OR DATA COMPILATIONS- STORED IN ANY MEDIUM FROM WHICH INFORMATION CAN BE OBTAINED EITHER DIRECTLY OR, NECESSARY ,AFTER TRANSLATION BY THE RESPONDING PARTY INTO A REASONABLY USABLE FORM;)RE. ALSO SEE:RULE 26 ..(a)(i)(ii)(iii)(iv) ...SEE ENCLOSED MOTION BY THE EASTERN DISTRICT COURT STATING THAT IF PLAINTIFF GIVE GOOD REASON FOR ALL THE CONFERENCE CALL TRANSCRIPTS THAT THE COURT HAS NO PROBLEM GRANTING PLAINTIFFS REQUEST FOR THE TRANSCRIPTS. WHICH THE PLAINTIFF STATED EVERYTHING PALINTIFF IS NOW STATING IN THIS MOTION TO THE FEDERAL COURT OF APPEALS OF THE SECOND CIRCUIT WHICH IS FEDERAL RULES AND LAWS STATING PROPER REASON FOR ALL CONFERENCE CALL TRANSCRIPTS TO BE PRODUCED TO PLAINTIFF WHICH WILL PROVE ADMITTANCE BY DEFENDANTS THROUGH THIER ATTORNEY, IN WHICH WILL ALSO GIVE GROUNDS FOR PLAINTIFFS CONVICTION TO BE DISMISSED IN ITS ENTIRETY UNDER THE UNITED STATES CONSTITUTION AND THE UNITED STATES BILL OF RIGHTS THAT PLAINTIFF IS PROTECTED FROM...

AND PROSECUTORS AND POLICE MISCONDUCT IN THERE INVESTIGATORY, INTERROGATING, AND UNCONSTITUTIONAL ILLEGAL CONFINEMNET AND ILLEGALLY ENHANCING PLAITIFFS SENTENCE WITH MORTGAGE FRAUD WHICH LED TO ALSO ILLEGALLY ENHANCING PLAINTIFFS SENTENCE AS A SECOND FELONY OFFENDER WHEN THE PLAINTIFFS TEN YEAR PERIOD HAD PAST AND ILLEGALLY ENHANCING PLAINTIFFS CONVICTION WITH CONSPIRACY WHEN PLAINTIFF CRUZ HAS NO CODEFENDANTS. AS PLAINTIFF WAS SENTENCED TO 8 YEARS WITH 5 POST FOR CRIMINAL SALE OF A CONTROL SUBSTANCE AND MORTGAGE FRAUD TO RUN CONCURRENT WITH SECOND DEGREE CONSPIRACY AT 7-14 YEARS ...

UNDER PENALTY OF PERJURY I PLAINTIFF MIGUEL . CRUZ DECLARE IT TRUE BASED ON FACTS WITH FEDERAL AND STATE LAWS RULES AND STATUES, AND TO THE BEST OF MY KNOWLEDGE..

PLAINTIFF FEELS THIS MOTION SHOULD BE GRANTED IN IT'S ENTIRETY. FREE OF CHARGE FOR ALL DOCUMENTS AND CONFERENCE CALL RECORDINGS TO BE PRODUCED WITH NO REDACTIONS , AS PLAINTIFF ALSO REQUEST THAT DEFENSE ATTORNEY'S PRODUCE ALL DEFENDANTS DISCIPLINARY RECORDS,C.C.R.B. RECORDS, AS WELL ASWALL RECORDS FROM THE INTERNAL AFFAIRS BUREAU WHETHER OR NOT THEY HAVE ANYTHING ON THIER RECORDS OR NOT WITHOUT ANY REDACTIONS BESIDES THEIR ADDRESSES,HOME PHONE NUMBER,DATE OF BIRTH AND SOCIAL SECURITY NUMBER, IN WHICH THOSE CONFERENCE CALL TRANSCRIPTS WILL ALSO PROVE THAT THE DEFENSE ATTORNEY ALSO STATED THAT FORMER A.D.A LEINARUS WAS NOT YET A PARTY TO THESE

TO THESE CLAIMS BECAUSE SHE WAS TERMINATED FROM THE DISTRICT ATTORNEYS OFFICE , AND NOW THE NEW DEFENSE ATTORNEY'S ARE REFUSING TO PRODUCE HER FILE STATING THAT SHE HAS NO DISCIPLINARYS ON HER FILE AND THAT SHE IS STILL EMPLOYED AT THE DISTRICT ATTORNEY'S OFFICE WHEN DEFENDANTS FORMER ATTORNEY MR.J.MARUTOLLO HAD STATED ON CONFERENCE CALL THAT MRS.MARIA.LEINARUS WAS TERMINAT AS I HAD RECIEVED THAT INFORMATION FROM ATTORNEY MR.ANDREW STOLL, OF HER BEING TERMINATED FROM THE DISTRCT ATTORNEYS OFFICE DUE TO CORRUPTION IN SEVERAL YEARS OF DRUG CONSPIRACIES IN BROOKLYN AND HER SUPERVISOR MR.LAWRENCE,O WAS DEMOTED , AS WELL LAST YEAR WHEN I SPOKE TO MR.STANDREW STR TO SEE IF HE WOULD TAKE MY CLAIM AND COULD NOT BECAUSE HE WAS ABOUT TO START TWO TRAIL, AS HE ALSO MADE THE COMMENT "I HEARD WHAT THEY DID TO YOU AND THEY REALLY SCREWED YOU AND YOU HAVE A GOOD CASE AND SHOULD HAVE YOUR CASE DISMISSED IN APPEAL". AND THE COURT HAS MY FULL AUTHORITY TO RETRIEVE ALL THE CALLS I EVER MADE TO MR.ANDREW STROLL WHICH ARE PRERECORDED HERE AT ORLEANS SO THE COURT CAN SEE AND HEAR THAT CALL WITH ATTORNEY MR.ANDREW STROLL, WHICH WILL PROVE FACTS THAT THE DEFENSE ATTORNEY'S ARE DENYING. AND THOSE CONFERENCE CALL TRANSCRIPTS WILL ALSO PROVE THAT FQRMER ATTORNEY MR.J.MARUTOLLO OF THE N.Y.C. LAW DEPARTMENT HAS ALSO STATED AND VERIFIED WHAT MR.ANREW . ST~~O~~LL HAD TOLD PLAINTIFF CRUZ...
THIS MOTION SHOULD BE GRANTED IN ITS ENTIRETY ...

THANKING THE COURT IN ADVANCE

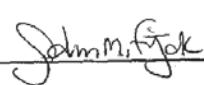
ENCLOSED E.D.C. MOTION IS DISPOSITIVEIN WHICH THE DISCUSSIONSWERE NOT SOLEY ON SCHEDUDLING AND CASE MANAGEMENT AS THIS COURT WILL SEE ONCE THIS COURT READS ALL CONFERENCE CALL TRANSCRIPTS. AND WILL NOTICE THAT THE TRANSCRIPTS ARE ESSENTIAL FOR THERE PRODUCTION TO PLAINTIFFS DEFENSE AND PROOF...

RESPECTFULLY


MIGUEL CRUZ DIN# 11A3104

plaintiff/appellant

SWORN BEFORE ME THIS
15 DAY OF March 2013


NOTARY PUBLIC

JOHN M. FITZAK
Notary Public - State of New York
No. 01FI6026303
Qualified in Orleans County
My Commission Expires June 14, 2015.

Judge Gold's Order can only be appealed to the District Judge, not as of right to the Second Circuit. The appeal is rejected and Judge Gold's Order affirmed as plaintiff's appeal is untimely, without merit, and in part, beyond the scope of Judge Gold's Order. Judge Gold committed no error and acted well within the scope of his discretion.
SO ORDERED: 3/29/13

U.S.D.J.